



California Regional Water Quality Control Board

Santa Ana Region



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Arnold Schwarzenegger
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Chris Crompton
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92702-4048

COMMENTS ON THE MODEL WATER QUALITY MANAGEMENT PLAN FOR THE COUNTY OF ORANGE AND INCORPORATED CITIES

Dear Mr. Crompton:

Regional Board staff completed a preliminary review of the updated Model Water Quality Management Plan ("MWQMP") submitted on May 24, 2010, pursuant to Provision XII.C.1. of Order No. R8-2009-0030, commonly known as the Orange County Urban Storm Water Runoff Permit ("Permit"). Included in the MWQMP is the Technical Guidance Document which includes the technically-based feasibility criteria developed pursuant to Provision XII.E.1. of the Permit. As you are aware, both these documents are subject to public review and approval by the Regional Board or the Executive Officer.

The MWQMP generally describes the process and requirements for the preparation of project WQMPs. The Technical Guidance Document provides supporting technical details for the MWQMP. Board staff is in the process of reviewing the Technical Guidance Document.

This letter provides Board staff's preliminary comments on the MWQMP. Our comments on the Technical Guidance Document will follow under separate cover. Because of the interrelationship between the MWQMP and the Technical Guidance Document, Board staff may provide additional comments on the MWQMP along with our comments on the Technical Guidance Document.

General comments on the MWQMP are provided here in this letter, with detailed comments provided in an electronic version of the MWQMP that will be transmitted in the near future. Even though we will be providing detailed comments, of which many are editorial in nature, it is not Board staff's intent to take on editorial responsibilities for the submittals. Regional Board staff expects that you will make changes to the MWQMP as indicated by our detailed comments and in response to the general comments below.

During our review of the MWQMP, Regional Board staff considered: 1) how instructive the document is to the intended audience; 2) the transparency of the described

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processes; and 3) consistency of the MWQMP with the requirements of the Permit. The intended audience includes not only preparers and reviewers of project WQMPs, but also members of the public who may want to understand how the water quality impacts of urban development are being addressed by the Permittees. With these considerations, Regional Board staff provides the following comments:

- 1) The MWQMP needs to include a clear description of who the intended users of the document are and instructions on how Permittees are to use the MWQMP and the Technical Guidance Document. This is important because the MWQMP represents an implementation plan subject to enforcement under Provision II.A.1. of the Permit and all Permittees' responsible staff and project proponents should clearly understand their obligations.
- 2) The MWQMP needs to include instructions explaining how the project WQMPs are to be integrated with the local jurisdiction's CEQA process, in order to demonstrate early consideration of best management practices (BMPs) and to serve as a basis to ensure that the water quality impacts of a project are mitigated. This instruction needs to include a description of how later substitutions of BMPs between the preliminary/conceptual project WQMP and the approved project WQMP will be addressed. This process must support findings, if necessary, that the new BMPs are at least as effective in mitigating water quality impacts and themselves do not cause any potentially significant environmental effects.
- 3) The MWQMP describes the obligations of the Permittees for the review/approval of project WQMPs. By itself, the MWQMP is not enforceable on "non-municipal" project proponents; however, it contains language that suggests that this is its purpose. The Permittees will need to secure appropriate legal authority to require project WQMP as per the MWQMP and to enforce the requirements of the project WQMP on project proponents. The MWQMP needs to describe the method(s) and related processes that each of the Permittees will employ to assure their legal authority.
- 4) The MWQMP includes many mandatory declarations (i.e. "shall be") without identifying the specific party that must comply. In many instances the context implies that the project proponent must comply, which creates a corollary obligation on the respective Permittee to assure compliance. In some instances it is unclear who has the responsibility to comply with a requirement, potentially creating significant enforcement problems for the Permittees. The MWQMP needs to be reviewed and edited to ensure that there is no ambiguity surrounding responsibilities for compliance with its requirements.
- 5) The MWQMP needs to include corresponding forms, worksheets, and model language to assist preparers and reviewers of project WQMPs. These items will promote consistency across the permitted area, aid in the preparation of the project WQMP, improve the quality and ease of project WQMP reviews, and help

ensure that all of the necessary elements of a project WQMP are present at the time of approval.

- 6) The MWQMP includes descriptions of processes, or references to processes that needs further details to provide clear guidance to the project proponents and the Permittees. (The specific processes noted by Regional Board staff are called out in the detailed comments, which will be provided separately.) These processes must be either fully described so that they may be evaluated by the public and the Regional Board or they must be deleted. Examples include a reference to an alternative CEQA, significance-based process, referenced in Section 7.II-2.4.3.1, and a "rigorous feasibility analysis," referenced in Section 7.II-2.4.2.
- 7) The MWQMP asserts that, where reclaimed wastewater is available for use by a project, storm water capture and use is precluded. The rationale for this assertion is not provided. While the Regional Board supports the use of reclaimed wastewater, the MWQMP has not provided any analysis that storm water capture and use precludes the use of reclaimed wastewater, or vice versa, for all projects. The Executive Officer cannot approve the MWQMP, and tacitly approve of this assertion, without sufficient, supporting analysis.
- 8) The MWQMP proposes to use "average annual capture efficiency" or "capture efficiency" in lieu of "design capture volume" under circumstances that are more clearly described in the Technical Guidance Document. Before this alternative sizing criteria can be considered for approval, the rationale for its use must be explained. In addition, the circumstances for its use must be clearly described in both the MWQMP and the Technical Guidance Document. Regional Board staff recommends that a technical rationale be provided in a singular location as an appendix to the MWQMP rather than including it within the text.
- 9) The MWQMP and the Technical Guidance Document proposes to use 48-hours as a limit to the detention of storm water runoff for the purpose of minimizing vectors. This limit is important to sizing the footprint of various treatment control BMPs which influences the feasibility of employing these BMPs on a project site. Alternative limits of as high as 96-hours have been discussed¹, which may reduce the footprint of a BMP. In order to maximize the feasibility of BMPs, the greatest allowable limit should be used.
- 10) Where performance criteria are mandatory, the MWQMP should state so plainly. Where the performance criteria are subject to discretion, the default criteria

¹ http://www.cdph.ca.gov/HealthInfo/discond/Documents/CDPHBMPMosquitoControl6_08.pdf



should be stated along with the acceptable range of variation and the circumstances under which variation is allowed.

- 11) The use of reclaimed water for irrigation of various treatment control BMPs is a logical and expected use. The MWQMP must include performance criteria for this use in order to address its water quality impacts consistent with State Water Resources Control Board's Recycled Water Policy in Resolution No. 2009-0011. When developing the appropriate performance criteria, Resolution No. 2009-0011 should be specifically referenced.
- 12) The MWQMP needs to be reconciled with the 2003 DAMP. The DAMP requires that non-priority projects will have a WQMP developed while the MWQMP indicates in several locations that another process will be followed. If the Permittees intend to abandon preparing WQMPs for non-priority projects, the 2003 DAMP will need to be updated to indicate how Provision XII.B.7. of the Permit will be complied with and the alternate compliance mechanism must be fully described in the MWQMP.
- 13) The MWQMP describes processes for identifying pollutants of concern and priority pollutants of concern. However, it provides no instruction to the users on how this information is to be used in the selection of treatment control BMPs.
- 14) The MWQMP needs to describe general procedures for obtaining waivers from development standards (i.e. parking space requirements) in order to accommodate treatment control BMPs, if necessary.
- 15) The MWQMP includes several references to "overall water resource management objectives" as a potential impediment to implementing some BMPs. However, the MWQMP does not adequately elaborate on those objectives.
- 16) The MWQMP describes various methods and procedures that are described in more detail in the Technical Guidance Document. However, the reader is not given any instructions on the proper use of the two documents and their interrelationship, and is not consistently alerted at the appropriate points in the MWQMP to the existence of the detailed methods and procedures in the Technical Guidance Document. The MWQMP must consistently provide direct references to all relevant sections of the Technical Guidance Document in order to assure that reader is made aware of and is able to locate and use the detailed methods.
- 17) The MWQMP concludes that "green roof, brown roofs, and blue roofs are currently considered beyond the MEP standard in Orange County". Regional Board staff believes that it is helpful for the MWQMP to provide analysis of the feasibility of specific treatment control BMPs that is broadly applicable to categories of projects. Such analyses can help speed the process of BMP



selection. However, this conclusion is overly broad and is not supported by any analysis.

- 18) The MWQMP references a "certain threshold of relative cost effectiveness" that will be developed. The threshold, or methods to develop the threshold, should be described in a way that is useful for the intended users.
- 19) The MWQMP includes an open-ended clause that allows "other types of projects that provide environmental benefits" to be considered for water quality credits. The Permit at XII.E.4 has a list of potential projects for water quality credits and any proposed additions to this list must be listed in the MWQMP including a justification for their inclusion or criterion for the selection of additional projects for water quality credits should be discussed.
- 20) The 2003 DAMP states, "For proposed projects subject to discretionary approval, the Permittees *will* require a preliminary or conceptual Project WQMP as part of the application for project approval [emphasis added]" (p. 7-27). In contrast the MWQMP states that such project WQMPs "*should* be submitted during the environmental review phase (CEQA) [emphasis added]" which occurs prior to project approval. While the language in the 2003 DAMP makes the early submittal of project WQMPs mandatory, the MWQMP backslides by making early submittal discretionary. The MWQMP must be made consistent with the 2003 DAMP.
- 21) The MWQMP provides several flow charts that represent the process for analyzing the feasibility and subsequent implementation of BMPs for a project with respect to the hierarchy required by the Permit. The hierarchy itself is not illustrated separately. A simplified table or figure that lists the categories of BMPs according to the hierarchy is needed for ease of reference.

As indicated above, the comments provided are limited to the MWQMP and additional comments on the Technical Guidance Document will be sent under separate cover. The detailed comments are in an electronic copy of the MWQMP which will be transmitted separately.

If you have any questions, please contact Adam Fischer at afischer@waterboards.ca.gov or at (951) 320-6363 or Mark Smythe at msmythe@waterboards.ca.gov or at (951) 782-4998.

Sincerely,



Michael J. Adackapara
Division Chief

